IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1118 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAFATBHAI V SHAH

Versus

SECRETARY GOVT. OF INDIA

Appearance:
MR MAFATLAL V SHAH for Petitioner
MR MUKESH R SHAH for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 23/06/2000

C.A.V. JUDGEMENT (Per Patel, J.)

A practising Lawyer has filed this petition making a prayer, amongst other prayers, that the Central Government be directed to appoint adequate staff and to provide adequate space for the office of the Official Liquidator. The petitioner has also prayed for a direction to the Official Liquidator to expedite the

disposal of all issues arising in winding up matters more particularly of Textile Mills on top priority basis as the ex-workers of these Mills are suffering on account of non-payment of their dues.

2. From the record it appears that there are in all 239 Companies under liquidation and the present Liquidator is required to deal with all these 239 Companies. Out of the 239 Companies under liquidation, 50 Companies are Textile Mills. Management of huge assets are involved in the liquidation of these Companies. For example, it is indicated that assets worth Rs.100 Crores are involved insofar as Calico Mills is concerned. Assets of about Rs.70 to 80 Crores of Ambica Mills, Rs.50 Crores of Motorolla Company and Rs.150-175 Crores of 16 units of GSTC are involved in some of the other matters.

2.1 In the petition, petitioner has given history of Textile industry since the establishment of textile mills in Ahmedabad. The petitioner has placed on record the figures from a Press Cutting, Economic Times dated 18.1.1999 (vide Annexure 'A') indicating that in Bombay in 1981, 2,50,000 workers were employed in Textile Mills and today there are less than 30,000 workers on the rolls of these mills. It is contended that the Mill Owners explain the downfall of the Textile Mills by saying that there is a massive evasion of excise duty by powerloom sector. So far as the State of Gujarat is concerned, it is stated that the winding up of the Textile Mills has thrown about 50,000 workers out of their permanent jobs out of which about 36,000 workers in Ahmedabad alone. Out of 63 mills in liquidation, 36 textile mills are situated in Ahmedabad and 12 textile mills belong to the Gujarat State Textile Corporation Ltd. Ambica Mills group Company ordered to be wound up on 17.1.1997 and Calico Mills and Illac Limited were ordered to be wound up on 15.7.1998. The petitioner has given figures in a separate Annexure vide ANNEXURE 'B'. The petitioner has placed on record list of the Companies in liquidation, vide Annexure 'C' with number and date of winding up order. Orders with regard to two Companies were passed prior to 1960. With regard to 7 Companies, the date of winding up range between 1961 and 1969. Four companies were ordered to be wound up in 1970. Thus even orders passed prior to 13.12.1970 still remain in cold storage in certain cases. The petitioner has given the break up of workers and the date of winding up orders etc. insofar as Textile Mills of Ahmedabad are concerned.

2.2 In further affidavit, the petitioner has pointed

out that the office of the Official Liquidator situated at 6 Navyug Society is not at all sufficient to bear the huge workload in view of shortage of staff and space. No doubt, it is not for the petitioner to point out as to how much area would be required looking to the present situation, but he is quite justified in pointing out that the office premises, looking to the quantum of work, is quite small and even the staff provided to the Official Liquidator is totally inadequate. It might not have been expected by the Parliament and even by the State Government that people who are investing huge amount in industries would be required to close the unit by winding up. This Court is not required to examine the reasons for sickness of particular industry or particular Company or unit. Suffice it to say that large number of people who were working in the Companies ordered to be wound up and creditors including small investors are suffering a lot today. As far as the industrialists are concerned, it is not for this Court to express an opinion whether they are the sufferers or not.

3. Looking to the fact that after winding up order, appropriate actions are not taken, the petitioner has approached this Court. It is required to be noted that when the office of the Official Liquidator was established, there were few units in comparison to the number of units existing today. Looking to the growth of industries and eventually some of them falling sick, and ultimately being wound up, the establishment of Official Liquidator became totally inadequate in strength on account of paucity of staff as against the work.

4. It is required to be noted that under the Company's Act, the Official Liquidator is required to take charge of the assets when a Company goes under liquidation. He is required to file a report before the Court ordering winding up of the Company. He has to look after the litigation and proceedings filed in various Courts. He has to take inspection of books of account. He is required to file criminal complaints in case of necessity against the defaulting Directors. He has to submit preliminary report under section 135 of the Companies Rules. He is required to recover debts, loans and advances etc. after verifying the state of affairs. He has to examine various categories of creditors i.e. secured creditors or unsecured creditors. He is required to verify, investigate and file the claims of all creditors. He has to take the assistance of Chartered Accountants for verifying the statements of claims. He has to submit in the Court reports regarding proof of debts and the loan of creditors. He has to submit a list

of contributories. He is required to sell all the properties of the Company in liquidation. He has to file Income Tax Returns and half yearly accounts before the Court. he has to file dissolution report in case of voluntary liquidation. As indicated earlier, considering the number of the industries existing at the time of bifurcation of bilingual Bombay State and comparing it with today's situation, certainly the space and staff provided to the Official Liquidator can be said to be inadequate and ineffective to carry out the duties to be discharged by the Official Liquidator more particularly looking at the numbers of Companies ordered to be wound up.

5. So far as the staff is concerned, we inquired from the learned counsel appearing in the matter and we are told that there are only eight persons working today in the office of the official Liquidator, as against the 9 sanctioned posts, which are indicated below.

Superintendent Gr. I 1
S.T.A. 1
Sel. Gr. Steno 1
Hindi Translator 1
C.P. GR. III 1 (Vacant)
UDC 1
LDC 1
DAFTARY 1
JTA 1

One person is working on each post. So far as the post of C.P. Grade III is concerned, the same is lying vacant.

5.1 Looking to the present workload, we understand from the learned counsel that the minimum requirement is as under:

C.P. Grade III 3
S.T.A. 4
Inspectors 2
J.T.A. 8
Stenographers 3
U.D.C. 10
L.D.C. 12
Daftary 3
Peon 2

5.2 In the affidavit dated 23.12.1999 filed by Assistant Official Liquidator in paragraph 8 it is pointed out that the Honourable Supreme Court has

directed the Respondent No.1 to frame a scheme for absorbing Company paid staff against Group 'C' post in the subordinate offices of the Respondent No.1. He has further pointed out in paragraph 9 of the affidavit that in order to expedite the winding up proceedings and distribution of the assets, the Government has constituted an expert committee under the Chairmanship of Shri Justice V. Balakrishna Eradi, a retired Judge of the Supreme Court, to examine the existing law relating to proceedings for winding up of Companies in line with the latest developments and innovations to remodel it in the field of corporate laws.

5.3 In paragraph 10 of the affidavit it is pointed out that the sale of properties of Textile Mills in liquidation was delayed as per the request made by representative Union of workers of these Textile Mills to the State of Gujarat and in turn the Central Government instructed and/or requested the Official Liquidator and the Court was requested not to dispose of assets or properties as the Government of Gujarat was considering to propose a National Renovation Scheme for the benefit of the workers. However, since the scheme did not materialise, this Court issued directions in accordance with law to the Official Liquidator to dispose of the properties of the Textile Mills. Official Liquidator has also submitted that a Public Notice has also been issued for office accommodation by giving public advertisement. It is further suggested that as the matter is under active consideration, this Court should not pass any order in respect of the same.

6. This petition is filed in 1999. Considering the nature of the matter, the Court issued notice on 15.2.1999. Counsel for Union of India was directed to file affidavit-in-reply. Administration should have realised long back that since winding up orders are passed by the Court in respect of number of Companies, the office of the Official Liquidator should have been armed with proper staff so that the assets are disposed of at the earliest without the value of the property getting lost either by efflux of time, or by theft or by getting impaired on accounting of rust.

7. Companies (Court) Rules, 1959 are framed in exercise of powers conferred by sub-sections (1) and (2) of Section 643 of the Companies Act, 1956. When there is a winding up by the Court, a provisional liquidator is appointed. Rule 308 for employment of staff reads as under:

308. "Where the Official Liquidator is of opinion that the employment of any special or additional staff is necessary in any liquidation, he shall apply to the Court for sanction, and the Court may sanction such staff as it thinks fit on such salaries and allowances as to the Court may seem appropriate".

8. Thus, till the arrangements are made by the Government for employment of additional staff, we direct the Official Liquidator to make an application to the Company Court for employment of special or additional staff and it will be for the Court to pass appropriate orders sanctioning special or additional staff as it thinks fit. Such appointment may be for a Company or more than one Companies, and duration of the employment may be fixed either by period or till the complete dissolution of the Company.

9. Section 449 of the Companies Act as it stands today is a new provisions. The Joint Committee's report on the Companies Bill at para 150 made suggestion as under:-

"Original clause (414) which provided for the appointment of private persons as liquidators by the Court has accordingly been omitted. Consequential and other minor changes have also been effected in other clauses".

In view of section 449 of the Companies Act, only the Official Liquidator shall function as Liquidator of the Company and Court should not appoint private persons as liquidators - (Companies Act, B.A. Ramayia - page 2921).

9.1 It is also required to be noted that if the Official Liquidator is not in a position to look after the properties of the units which are already wound up under the orders of the Court, then in that case, under the existing Companies Act, the law has permitted the Official Liquidator to get Receiver appointed with the leave of the Court. It will be for the Official Liquidator to consider this aspect and to make a proper application before the Court for appointment of Receiver so that the property of the Company which is wound up or which is in winding up for which Official Liquidator is appointed can be managed properly and the creditors may not suffer. Such arrangement for proper administration and management would be in the interest of creditors, including labourers. If the property is not looked after

for better value, that will have adverse effect on the persons interested in recovering their dues. The Official Liquidator thus is, in view of the provisions, in a position to request the Court for appointment of a Receiver for a particular Company till the complete dissolution of the Company. It will be for the Court to consider the facts and circumstances of the case, location of the unit, number of workmen or the persons likely to be effected and such other factors for which we need not say in detail at this stage, and the Court concerned would pass appropriate orders after considering facts and circumstances of the case.

10. We also direct the respondent No. 1 to appoint proper staff so as to see that there is no wastage of the property of the Companies under liquidation and the persons entitled to get their dues may get the same in time. One has to bear in mind that if the property of a Company which is recently closed is being disposed of, the machinery would be in working condition and reasonable amount can be fetched if put to auction. Even the buildings may fetch better price if offered within a reasonable period from closer, but after passage of few years, the machinery as well as buildings will lose its appreciation in terms of value, and in several cases, may be totally useless. The reasons for that may be several.

11. With these directions to the Official Liquidator to make an application with regard to appointment of a Receiver and for appointment of special or additional staff and also to the Respondent No.1 to appoint adequate staff in the office of the Official Liquidator so that the orders of the Court in liquidation proceedings can be complied with and the creditors including labourers may not suffer, we dispose of this petition with a hope that no further action will be required to be taken up by this Court in this regard.

12. Rule made absolute accordingly. No order as to costs.

(B.C. PATEL, J.)

csm./ (D.H. WAGHELA, J.)